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IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.44 OF 2014

SHRI GUNAJI K. GOVEKAR,
son of Krishna Govekar, aged
43 years, Indian National,
Resident of H. No. 662,
Chonsai, Parsem,
Pernem, Goa – 403 512 ... Petitioner

Versus

1) THE STATE OF GOA,
through the Chief Secretary
Home, Secretariat,
Alto – Porvorim, Goa.

2) THE DIRECTOR GENERAL OF
POLICE,
Police Head Quarters, Panaji,
Goa – 403 001.

3) THE DY. INSPECTOR GENERAL OF

POLICE,

Police Head Quarters, Panaji,

Goa – 403 001.

4) Mr. Vishram U. Borkar,

Superintendent of Police-North,

(inquiry officer), Porvrim,

Goa – 403 521.

5) Mr. Dhinraj R. Goverkar,

Police in – charge,

Panaji Police Station,

Panaji, Goa – 403 001. ... Respondents

Mr. Parikshit Sawant with Mr. Sachin Raul, Advocates for the Petitioner.

Mr. Deep Shirodkar, Additional Government Advocate for Respondent Nos. 1 to 3.

CORAM: **VALMIKI MENEZES &**
SHREERAM V. SHIRSAT, JJ.

RESERVED ON: **9th September, 2025**

PRONOUNCED ON: **19th September, 2025**

JUDGMENT (*Per Shreeram V. Shirsat, J.*):

1. The Petitioner, by filing the present petition, inter alia, prays that this Court should quash and set aside the findings of the Superintendent of Police (North), Porvorim, dated 18.04.2013 and also the order dated 17.07.2013, passed by the Chief Secretary under Order 19A of The Police Subordinate Service (Discipline and Appeal) Rules, 1975 ("The Rules"). The Petitioner has also prayed that the Respondents be directed to reinstate the Petitioner back in service with all back wages and accruable service/statutory benefits.

2. Brief facts germane to the present petition are enumerate as under:

a. The Petitioner states that in the year 1990, on the recommendation of the Departmental Selection Committee, the Petitioner was appointed as a Police Constable. Initially, he was on probation for a period of two years and thereafter his services were confirmed in the year 1994. The Petitioner further states that he was working as Police Constable and was posted at Thana, Cortalim. On 04.04.2000, the Petitioner was on duty along with other Head Constables namely Shri Shinde and Morajkar at Thana, Cortalim Police Outpost. At around 4:15 p.m., the Head Constable who was sitting in the office room of the Outpost, heard some sounds of commotion and upon noticing the same, he saw that a large mob of approximately 100 to 250 persons armed with weapons were running towards the Police Outpost from the direction of the paddy field at Thana Market. The Petitioner further states that at that time, Police Constable Morajkar and the Petitioner were in the

adjacent room and the Head Constable immediately tried pulling down the shutters from the Outpost. However, he was unable to do so as the mob was pelting stones and bottles at the outpost. The Petitioner states that he could hear the loud shouts of the mob outside, who were shouting '*polisank marai, marai*', which means (in English) 'Hit! hit the policemen'. It is further his case that the Petitioner and others, after some time, managed to escape, fearing the imminent danger to their lives but sustained some injuries and thereafter managed to take shelter at the nearby place.

b. On the next day, i.e. on 05.04.2000, the Petitioner went directly to the Verna Police Station where the Petitioner was asked to narrate the incident to Shri D.R. Govekar, P.I. and Police Sub-Inspector Mr. Silva. It is further his case that a statement was prepared by Shri D.R. Govekar about the incident dated 04.04.2000 and it was read out to him in

Konkani. However, according to the Petitioner as he was still reeling under the shock of the attack, he could not understand the gravity of the said statement. The Petitioner was given a copy of the said statement, which he has referred to as the 'First Statement' in his petition. The Petitioner further states that he went to the Primary Health Centre at Pernem on 07.04.2000 where he was treated for his injuries and was asked to take rest. It is further his case that on 22.04.2000, the Petitioner was re-examined by the Doctor who prescribed additional 15 days of rest as the injuries did not heal.

c. It is further the case of the Petitioner that the Petitioner received intimation/summons by Police Inspector Crime Branch, Shri Vaman Tari to attend the Police Headquarters in Panaji. On 25.04.2000, the Petitioner visited the office where he was informed that he would have to make a further statement elaborating his statement dated

05.04.2000 which was recorded by P.I. Govekar. It is the case of the Petitioner that, upon reading the statement, he was surprised to notice certain discrepancies in respect of facts recorded in the statement. The Petitioner further submits that he had raised his concerns stating that he had never identified any person by name and that he could identify the people present at the time of the attack by face. However, the Petitioner was shocked and surprised by the contents of the statement dated 05.04.2000 and therefore he refused to transcribe this statement in his own handwriting. The said statement has been referred to as the 'Second Statement' by the Petitioner in the petition.

d. The Petitioner further submits that the Petitioner refused to record such a statement for three days until 28.04.2000 which included the inclusion of 6 to 8 names and the weapons allegedly carried by the aforesaid people. On 28.04.2000, the Petitioner was instructed by Senior Police

Personnel to transcribe exactly what was dictated to him by P.I. Tari and was accordingly given a pen and paper and P.I. Tari dictated the statement which was recorded in Marathi. It is further the case that the Petitioner being a subordinate Policeman was not in a position to disobey the command by a senior officer and therefore, reluctantly recorded the aforesaid 'application' in Marathi and signed it under protest.

e. The Petitioner further states that on 16.05.2000, the Petitioner received a notice summoning him to give his statement under Section 164 Cr.P.C., before the Judicial Magistrate First Class at Vasco on 20.05.2000. It is the case of the Petitioner that prior to recording his statement, the J.M.F.C. explained the significance of such a recording and the difference between statement recorded by the Police and by the Hon'ble Magistrate. Thereafter, the statement was recorded by the learned J.M.F.C. wherein according to the Petitioner, he

deposed in a truthful manner.

f. It is further the case that on 01.08.2001, the Petitioner received a 'Charge Memorandum' under Section 6 of the Goa Police Subordinate Service (Discipline and Appeal) Rules, 1975 read with Section 7 of the Indian Police Act, V of 1861 and the substance of the charge was that the Petitioner by not naming the members of the mob during his 164 statement and having resiled, had turned hostile and such actions of the Petitioner were termed as showing 'a high degree of cowardice, treachery and fellow feeling' and the Petitioner had thereby failed to maintain absolute integrity of a civil servant and thereby in violation of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

g. The Petitioner was granted 10 days to submit his defence/reply, which was submitted by the Petitioner on 08.08.2001. The Petitioner further states that during the Departmental Inquiry, two

witnesses were examined namely Shri Morajkar as PW1 and Shri Govekar as PW2. The Petitioner who was represented by his next friend cross examined the two witnesses.

h. After the evidence was closed, a letter dated 14.12.2001 was issued to the Petitioner calling upon him to submit a list of defence witnesses, if any, within seven days. The letter also further recorded that in case no witnesses are to be examined, then the defence statement should be submitted. The letter further recorded that if no reply is received within the stipulated time, it will be presumed that the delinquent had no defence witness and he does not wish to submit defence statement and the findings of the report will be submitted. Pursuant to the receipt of the letter dated 14.12.2001, the Petitioner submitted his final defence statement on 24.12.2001.

i. On 15.01.2002, the Inquiry Authority under the

signature of Serafin Dias Police Inspector, Vasco Police Station submitted its Inquiry Report under Rule 6 of Goa Police Subordinate Services (Discipline & Appeal) Rules, 1975 r/w 79 IP Act, 1881. The SP (South) Margao-Goa agreed with the report of the Inquiry Authority and proposed to impose on him penalty of dismissal from service and the copy of the letter dated 29/1/2002 was marked to the Petitioner calling upon the Petitioner to file its reply within 15 days. The Petitioner filed his reply on 08.02.2002. The Superintendent of Police (South), Margao, Goa after taking into consideration the Inquiry Report passed an order of dismissal from service.

j. Against the said order of dismissal of service, the Petitioner filed an appeal on 30.03.2002 before the Director General of Police, Panaji under Rule 14 of Police Subordinate Service Rule, 1975. The said appeal was marked to the Deputy Director General of Police, who dismissed the same vide

order dated 12.06.2002. The Petitioner thereafter preferred a Review Petition before the Chief Secretary on 02.07.2002 which came to be dismissed by the Joint Secretary (Home) vide communication dated 20.05.2003 on the ground that the Chief Secretary had no power to review an order passed by the Deputy Director General of Police and stated that the said order could be reviewed by the Director General of Police being higher authority of Dy. Inspector General of Police.

k. The Petitioner further states that on 28.05.2003, pursuant to the orders of the Joint Secretary (Home), the Petitioner preferred a Review Petition before the Director General of Police, Panaji, Goa, however, the same came to be dismissed vide order dated 30.06.2003.

l. The Petitioner further states that the Writ Petition No 166/2004 was preferred for setting aside the orders passed by the Inquiry Authority and order

of the Superintendent of Police (South), Margao, Goa. This Court passed an order observing that Chief Secretary could not have asked the Petitioner to file a review petition before DGP as no such powers have been conferred on DGP. It further held that the Chief Secretary had powers of Revision under Section 19A to examine orders passed by appellate authority. The Chief Secretary was directed by this Court to treat the review petition dated 02.07.2002 filed by Petitioner as a Revision Application under Rule 19A, consequently communication dated 20.05.2003 by Joint Secretary and order dated 30.06.2003 passed by the DGP, Panaji, were quashed and set aside. Further, directions were given that the Chief Secretary shall dispose of the Revision Application after giving opportunity of being heard and to dispose of the application expeditiously.

m. Pursuant to the aforesaid decision of this Hon'ble Court, the Petitioner accordingly on 01.10.2012

preferred a revision application under Rule 19A before the Chief Secretary.

n. Thereafter, there was an extension of time sought by the Chief Secretary to complete the proceedings. The Chief Secretary directed the Superintendent of Police (North) to enquire into Revision Application exercising powers under Clause c of Section 19A.

o. The Superintendent of Police (North), thereafter, submitted his Inquiry Report to the Chief Secretary who, on examining the same, dismissed the Revision Application dated 01.10.2012.

p. The Petitioner further addressed a letter to the Under Secretary (Home) stating that vide order dated 13.9.2012, the Hon'ble High Court had directed that the Revision Application should be heard by the Chief Secretary, however, the same was not heard by the Chief Secretary and, therefore, the petition be heard by the Chief

Secretary.

q. On 17.7.2013, the Chief Secretary passed an order under 19A of Police Subordinate Services (Discipline and Appeal) Rules 1975 and declined to interfere with the findings of the Inquiry Officer as well as the orders of the Disciplinary Authority/ Appointing Authority.

3. It is in these circumstances, the Petitioner has now approached this Hon'ble Court invoking writ jurisdiction under Articles 226 and 227 of the Constitution of India to set aside the orders dated 18.04.2013 and 17.07.2013.

4. Learned Advocate for the Petitioner, Mr. Parikshit Sawant has advanced the following submissions:

a. He submits that under Sub-Rule 17 of Rule 6 of the Rules mandates that the inquiring authority shall generally question the member of service charged, if such person does not lead evidence on his own or examine himself; he submits that the Inquiry

Officer is required to, if the charged Officer, does not, on his own lead evidence, to call upon such Officer to lead evidence, as mandated by Sub-Rule 17. He submits that Sub-Rule 17 is mandatory in nature, and in the present case, the Inquiry Officer has not followed this mandatory provision by calling upon the Petitioner to give his evidence, resulting in vitiating the entire inquiry process.

b. It was further submitted that the allegations imputed to the Petitioner in the charge-sheet, cannot be sustained as the basis that such allegations are a false statement as recorded in the first statement under Section 161 Cr.P.C.; he submits that the Disciplinary Authority could not assume that the statement made by the Petitioner before the Magistrate under Section 164 Cr.P.C., which did not contain the names of the assailants identified by the Petitioner as participants in the incident in the First Statement was false, since it

was different from what was recorded by the I.O. in the First Statement. He argues that the Statement under Section 164 Cr.P.C. to the Magistrate is truthful, as the Petitioner was actually unable to identify the assailants by name, but the Petitioner had stated that if he was shown the assailants, he would be able to identify them by face. The learned Advocate further submits that the Petitioner, immediately after the incident was in a state of shock, and though he had been given a copy of the First Statement made to P.I. Govekar, due to his state of mind, did not react to the contents thereof, which recorded that the Petitioner had disclosed the identity of witnesses by naming them. He, therefore, submits that the allegations in the charge-sheet themselves cannot be inquired into and could not constitute acts of misconduct alleged therein.

c. It was further submitted that the Chief Secretary had exercised powers vested in the Revisional

Authority under Clause (c) of Rule 19A of the Rules by directing further inquiry to be conducted by the Superintendent of Police (North); the learned Advocate submits that even this inquiry was conducted without following the principles of natural justice and without affording the Petitioner an opportunity of leading evidence, as all that was done was to hear the parties and present a report of such inquiry to the Chief Secretary. He, therefore, submits that the entire revisional procedure under Rule 19A is flawed, contrary to that Rule and vitiates the entire process of passing the revisional order.

d. Reliance has been placed by the learned Advocate for the Petitioner on a Judgment of the Hon'ble Supreme Court in ***Vinod Kumar v. State (Govt. of NCT of Delhi)***; **Criminal Appeal No.2482 of 2014**.

5. The Advocate for the Respondents Mr. Deep Shirodkar, has advanced the following submissions:

a. That the Statements under Section 161 are not substantive evidence of the Petitioner, and what has been recorded in the inquiry, was the statement of the I.O. Dinraj Govekar, who was the P.I. at Verna Police Station on the fateful day. He submits that this witness has deposed before the Inquiry Officer the statement made by the Petitioner to him, as a witness to the incident, which, according to this witness, identifies the assailants by name. He further submits that the Petitioner then resiled from his statement, and later stated to a Magistrate recording the Petitioner's Statement under Section 164 of Cr.P.C., that he could identify the assailants if produced, by face, but did not name the assailants. He then submitted that a member of a disciplined force was not expected to protect the accused and claim that he was unable to identify the accused, which is an act of gross misconduct, as charged.

b. The learned Advocate submits that the jurisdiction

of this Court and its scope of judicial review under Article 226 is extremely narrow; he would further submit that where findings are given by the Inquiry Officer which are based on some evidence and cannot be termed perverse, which have been confirmed by the Appellate Authority and the Revisional Authority, should not be lightly interfered with, and exercise the powers of judicial review of the High Court are uncalled for in these circumstances.

c. He would further submit that even the punishment meted out to the charged Officer was proper, considering that the Officer belonged to a disciplined force, and no tolerance could be shown to acts of indiscipline of the nature of which he was charged. He further argued that the punishment imposed could not be termed to be so disproportionate or such that would shock the conscience of this Court, to exercise its powers of

judicial review, to interfere with the same.

d. To buttress the submissions put forth by the learned Advocate for the Respondents, reliance was placed upon the following Judgments of the Hon'ble Supreme Court:

i. ***State of Uttar Pradesh and Anr. v. Man Mohan Nath Sinha and Anr***; **(2009) 8 SCC 310**.

ii. ***Mithilesh Singh v. Union of India and Ors.***; **(2003) 3 SCC 309**.

iii. ***State Bank of Bikaner & Jaipur v. Srinath Gupta and Anr.***; **(1996) 6 SCC 486**.

6. Heard.

7. With the able assistance of both the Counsels for their respective parties, we have gone through the records.

8. What can be seen from the perusal of the records is that although the Petitioner has not, in principle challenged the

order of the Inquiry Authority, the entire thrust of the Petitioner's case is against the findings of the Inquiry Authority to be perverse, unjustified and ultra vires and that the adoption of the perverse findings by the Revision Authority discloses non-application of mind.

9. At the outset, it will have to be seen whether the Petitioner can invoke writ jurisdiction to challenge the orders passed by the Inquiry Authority i.e. whether the powers under Article 226 can be exercised by this Court to delve into the findings of the Inquiry Authority.

10. Profitable reference can be made to the Judgment of the Hon'ble Supreme Court in the case of ***State of Uttar Pradesh v. Man Mohan Nath Sinha*** (supra), wherein the Hon'ble Supreme Court, referring to an earlier Judgment of ***State of A.P. v. S. Sree Rama Rao*** (supra), has come to a conclusion that it is not open to the High Court to re-appreciate and reappraise the evidence led before the Inquiry Officer and examine the findings recorded by the Inquiry Officer as a Court of Appeal and reach its own

conclusions. The relevant portion of the ***State of A.P. v. S. Sree Rama Rao*** (supra) is reproduced for the sake of convenience hereinbelow:

> *"7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."*
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> *14. The scope of judicial review in dealing with departmental enquiries came up for consideration before this Court in State of A.P. v. Chitra Venkata Rao (1975) 2 SCC 557 and this Court held: (SCC pp. 562-63, paras 21 and 23-24)*
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> *21. ... The High Court is not a court of appeal under*

Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

15. The legal position is well settled that the power of judicial review is not directed against the decision but is confined to the decision-making process. The Court does not sit in judgment on merits of the decision. It is not open to the High Court to reappreciate and reappraise the evidence led before the inquiry officer and examine the findings recorded by the inquiry officer as a court of appeal and reach its own conclusions. In the instant case, the High Court fell into grave error in scanning the evidence as if it was a court of appeal. The approach of the High Court in consideration of the matter suffers from manifest error and, in our thoughtful consideration, the matter requires fresh consideration by the High Court in accordance with law. On this short ground, we send the matter back to the High Court."

11. Taking into consideration the aforesaid Judgment, we

will examine whether in the facts of the case, the impugned orders call for exercise of judicial review by this Court in its writ jurisdiction under Article 226 of the Constitution of India. The parameters which are required to be canvassed are with respect to whether the Departmental Authorities have held, against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case; further, whether the Inquiry Authority, by allowing itself to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious, that no reasonable person could ever have arrived at that conclusion or on similar grounds.

12. It is the Petitioner's case that while he was working as a Constable, he was a witness to an incident of arson which took place on 04.04.2000 at Thana, Cortalim Outpost,

wherein a mob tried to vandalise and set the Police Outpost on fire, due to which the Petitioner and the other Constables had to run for their lives and take shelter at some place in the vicinity. It is the case of the Petitioner that the statement which came to be recorded on 05.04.2000 was not recorded as per his say or narration given by him and that he had never given the names of any person in the statement but had only stated that he can identify the persons by face and will be able to identify them if shown to him. It is also his case that on 25.04.2000, the Petitioner was informed that he would have to make a statement elaborating his statement dated 05.04.2000 recorded by P.I. Govekar. It is further his case that on 28.04.2000, the Petitioner was instructed by senior Police personnel to transcribe exactly what was dictated to him by P.I. Tari and that he was not in a position to disobey a command by a senior officer and, therefore, had reluctantly and under duress, written an application in Marathi and signed it under protest.

13. Further, it is his case that when his Statement under

Section 164 Cr.P.C. came to be recorded, he narrated his correct version and had said that he does not know the names of the persons who were in the said mob and if he sees their faces, he can recognise. It is further his case that thereafter, he was given a charge memorandum on 01.08.2001 to which written statement of defence came to be filed on 08.08.2001. Thereafter, there was examination and cross-examination of two witnesses by the present Petitioner. On 14.12.2001, a letter also came to be issued calling upon the Petitioner to submit any defence witnesses and thereafter, the Petitioner has submitted the final defence statement. Thus, from the above, it can be seen that the Inquiry Authority, after taking into consideration the entire evidence before it, has come to a conclusion that the delinquent, i.e. the Petitioner's conduct in not identifying the assailants and resiling from his statement in the Statement under Section 164 of the Cr.PC has shown a high degree of cowardice, treachery and fellow feeling and has thereby failed to maintain absolute integrity and thus violated Rule 3 of the Central Services (Conduct) Rules,

1964. The inquiry officer has considered the evidence of the P.I. who recorded the statement of the Petitioner after the incident; the Inquiry Officer has recorded a finding that this witness has deposed that the Petitioner had identified the assailants by specific names. This witness was cross-examined by the Petitioner.

14. Thus, from the above, it can be deduced that the Inquiry Authority has considered the evidence before it, and on the basis of such evidence has come to a conclusion/finding that the Petitioner has resiled from the statement made to the P.I., by refusing to name the assailants, before the Magistrate. It is on this basis that the Inquiry Officer has held the Petitioner guilty of the charge.

Thus, this is not a case that there was no evidence at all before the Inquiry Officer, but a case where there was some evidence, when considered by the Inquiry Authority leading to findings which cannot be termed as perverse. Judicial review of these findings, which are based on some evidence, is beyond the scope of powers vested in this Court under

Article 226 to review the evidence and to arrive at an independent finding based thereon.

15. It is further pertinent to note that the Inquiry Authority has followed the principles of natural justice by giving opportunity to the Petitioner from time to time to cross-examine the witnesses and to make effective representation which has been availed of by the Petitioner and, therefore, to that extent also, the Petitioner cannot invoke the writ jurisdiction.

16. The Petitioner, during the course of hearing has emphasised upon the interpretation of Rule 6(17) of the Rules, which states as under:

> "6*(17) The inquiring authority may, after the member of the service closes his case, and shall, if the member of the service has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the member of the service to explain any circumstances appearing in the evidence against him.*"

17. Further, the Petitioner has also relied upon a Circular dated 03.04.1997 which mentions that the Sub-Rule 17 of

Rule 6 makes it mandatory to ask the delinquents by Inquiring Authority to explain any circumstances appearing in the evidence against him. The Petitioner, therefore, wants to submit that it was mandatory for the Inquiry Authority after the evidence was closed and when the Petitioner had not examined himself, to put questions with respect to the circumstances appearing against him in the evidence and the failure to do so vitiates the enquiry proceedings.

18. It hardly needs to be emphasised that the circulars are administrative instructions that represent the Departments' interpretation of law and not the law itself. A plain and simple interpretation of Rule 6(17) contemplates the safeguards are afforded to the delinquent contemplating a situation wherein the delinquent has not examined himself due to inadvertence or due to any other circumstance which has prevented him from examining himself. The interpretation cannot be stretched to such an extent that if any delinquent voluntarily does not choose to examine himself despite being made aware, still the benefit should be

extended to him. This can never be the interpretation and purport of the said Rule 6(17).

19. Applying the above to the facts of the present case, it will be pertinent to mention that the Petitioner was indeed called upon vide letter dated 14.12.2001 and the letter reads as follows:

> "*You are hereby directed to submit list of defence witnesses if any to the undersigned within the seven days on receipt of this letter. If you do not have any witnesses, you should submit your defence statement within seven days in order to enable the undersigned to submit the finding report to the Supdt. of Police, South Goa Margao.*
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> *If no reply is received within the stipulated time, it will be presumed that you do not wish to submit defence statement and the finding report will be submitted.*"

20. Therefore, from the above, it can be seen that it is not the case that the Petitioner has inadvertently not examined himself or there was any such circumstance because of which the Petitioner was prevented from examining himself but here is a case where despite the receipt of letter dated 14.12.2001, the Petitioner has consciously and voluntarily not examined any witness including himself. Thus, he cannot derive the benefit of the Rule 6(17) on the premise

that no question was put to him with respect to the circumstances appearing against him in the evidence.

21. We are, therefore, of the opinion that the Departmental Authorities have not held the proceedings, against the delinquent, in any manner, inconsistent with the rules of natural justice or in the violation of the statutory rules, prescribing the mode of enquiry or have taken into some extraneous considerations or having got influenced by any irrelevant circumstances. We also do not find that the conclusions that have been arrived at by the Inquiry Authority is in any manner arbitrary or capricious or perverse. The Departmental Authority/Inquiry Authority has taken into consideration the legal evidence in totality which appeared before the authority and have based their findings on such evidence. Therefore, it is not open for this Hon'ble Court under writ jurisdiction to gauge/re-examine the adequacy or reliability of that evidence which was led before the Inquiry Authority.

22. The legal position is well settled that power of judicial

review is not directed against the decision but is confined to the decision-making process. The Court does not sit in Judgment on merits on the decision and it is not open to this Court to re-appreciate and reappraise the evidence led before the Inquiry Officer as a Court of Appeal and reach its own conclusion. We, therefore, do not find that this is a fit case where this Hon'ble Court can exercise its writ jurisdiction to set aside the findings arrived at by the Inquiry Authority on the basis of the legal evidence produced before the same.

23. Another issue raised was with respect to the proportionality of punishment wherein the contention was that the penalty imposed of removal from the service for having resiled from the statement is harsh and grave. We do not wish to give our findings on this aspect as well, as that would indirectly amount to interfering with the findings of the Inquiry Authority which according to us, is outside the scope of judicial review in exercise of the writ jurisdiction.

24. Further we also do not find any infirmity in the orders

dated 18.4.2013 passed by the Superintendent of Police (North), Porvorim and the order passed by the Chief Secretary, Goa, as both the Authorities have taken into consideration all the relevant aspects of the matter including the procedural aspects and have based the findings on the evidence on record.

25. Hence, the petition is dismissed. No costs.

SHREERAM V. SHIRSAT, J. **VALMIKI MENEZES, J.**